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OFFICE OF PETITIONS

In re Application of :
Sergey Matasov :
Application No. 09/509,377 :
Filed: August 28, 2000 : ON PETITION
Title of Invention: :
ENDOSCOPE WITH SINGLE-USE :
CARTIDGE FOR THE INVAGINATION :
OF ENDOSCOPIC TUBES :

This is a decision on the Petition to Withdraw Holding of Abandonment, filed March 29, 2006. Petitioner requests withdrawal of the holding of abandonment asserting that he timely filed a petition to restart a previously set period for reply. The delay in treating this petition is regretted.

The petition is granted.

Background

A non-final Office action was mailed in the above-identified application on December 15, 2004. Applicant filed a reply to the Office action via facsimile on March 12 and March 13, 2005, and via mail (from Latvia) on March 21, 2005.

This Office mailed a Notice of Non-Compliant Amendment ("Notice"), on June 28, 2005, informing Applicant that the Amendment failed to comply with 37 CFR 1.121.

On July 28, 2005 Applicant filed correspondence via facsimile wherein Applicant responded to an email from the Examiner, and stated that he had only now received any notice from this Office (apparently a reference to the

email). Applicant requested that this office re-send the Notice.

On August 3, 2005, Applicant filed correspondence stating that there was no United States postage stamp on the envelope indicating the date of mailing, and that the stamp of the Latvia post Office indicated a receipt date of July 30, 2005. Applicant surmised that the Notice was sent from the U.S. on or about July 20th, 2005. Applicant requested an extension of the reply period.

The instant petition

Applicant files the instant petition requesting withdrawal of the holding of abandonment because the reply period should have been reset based upon Applicant's request to reset the reply period filed August 3, 2005.

Applicable Law, Rules and MPEP

The MPEP 711.03(c) provides for petitions to withdraw the holding of abandonment. Two types of petitions may be filed: withdrawal of the holding of abandonment based upon the failure to receive an Office action, and withdrawal of the holding of abandonment based upon evidence that a timely reply to the Office action was filed.

In this instance, Applicant received the Office action (Notice) and asserts that a timely reply to wit - a petition to restart the reply period - was filed.

The MPEP 710.06 II, Petitions to Reset a Period for Reply Due to a Postmark Date later than the Mail Date Printed on an office Action, provides:

The Office will grant a petition to restart the previously set period for reply to an Office action to run from the postmark date shown on the Office mailing envelope which contained the Office action when the following criteria are met:

(A) the petition is filed within 2 weeks of the date of receipt of the Office action at the correspondence address;

(B) the reply period was for payment of the issue fee, or the reply period set was 1 month or 30 days; and

(C) the petition includes (1) evidence showing the date of receipt of the Office action at the correspondence address (e.g., copy of the Office action having the date of receipt of the Office action at the correspondence address stamped thereon, etc.), (2) a copy of the envelope which contained the Office action showing the postmark date, and (3) a statement setting forth the date of receipt of the Office action at the correspondence address and stating that the Office action was received in the postmarked envelope.

The provisions of 37 CFR 1.8 and 1.10 apply to the filing of the above-noted petitions with regard to the requirement that the petition be filed within 2 weeks of the date of receipt of the Office action. The showings outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been delayed after receipt rather than a conclusion that the Office action was delayed in the mail or in the Office.

Analysis

Here, Applicant filed a request to reset the reply period on August 3, 2005, asserting that the Notice was not received until July 30, 2005. In support of this assertion, applicant filed a copy of the envelope from this Office which included a stamp from the Latvia Post Office dated July 30, 2005.

In view of the foregoing, the petition is granted. The period of reply is hereby reset to run from the postmark date shown on the Office mailing envelope which contained the Office action, July 30, 2005. As such, Applicant was given until August 30, 2005 to file a timely reply to the Notice.

Applicant filed an Amendment in response to the Office action on August 5, 2005 via facsimile, and August 10, 2005 via mail.

The application is being referred to Technology Center Art Unit 3739 for consideration of the Amendment, filed August 5, 2005 via facsimile, and August 10, 2005 via mail.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

A handwritten signature in black ink, appearing to read "Derek L. Woods". The signature is stylized with a large initial "D" and a cursive "L".

Derek L. Woods
Attorney
Office of Petitions